STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 14, 2003
v	No. 236092 Osceola Circuit Court
STEVEN GREGORY MUNRO, Defendant-Appellant.	LC No. 01-003251-FH

Before: Meter, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant was convicted by a jury of operating a motor vehicle under the influence of liquor causing serious personal injury. MCL 257.625(5). He was sentenced to a term of five years' to twenty years' imprisonment and appeals as of right. We affirm defendant's conviction, but remand for the ministerial task of striking certain material from the Presentence Investigation Report.

I

The testimony at trial established that defendant's vehicle was traveling east, the victims' vehicle was traveling west. Defendant's vehicle crossed the centerline and struck the victims' car in its lane of travel; the collision occurred eight feet eight inches into the westbound lane. Mr. Ranjel, the driver of the victims' vehicle, attempted to avoid the collision, but was unable to get out of the path of defendant's vehicle. Defendant's blood alcohol level was 0.23. Defendant denied that he was driving when the collision occurred, but the evidence was to the contrary and the jury obviously concluded that he was the driver.

II

Defendant was unable to post bond and was in jail until the trial. On the first day of trial before jury selection he was taken into the courtroom in handcuffs and belly chain. It is clear from the record that this was inadvertent and an error by the officer who escorted him to the courtroom. The members of the jury array, or at least some of them, observed the handcuffs and belly chain which were removed shortly afterwards.

After the jury panel was sworn, the trial judge gave the following instructions to the jury:

> One, at the present time as the defendant sits there, he is presumed to be innocent. That's our system and I will tell you more about that as we go on. You may have noted—I'm sure you did from what I heard about it. –that he came in and they had handcuffs on him. He's dressed very appropriately, but he came from the jail, and he had handcuffs on. He did not have the handcuffs because he's a dangerous person. He had the handcuffs because—I don't know why.
>
> He shouldn't have had. I will be quite frank with you. He shouldn't have had them on when he walked in the door. He's in jail because he couldn't post bond. He's not got handcuffs because he's dangerous. He couldn't post the bond, didn't have the money. Therefore, he's in jail. They inadvertently, erroneously brought him in here with handcuffs on. Don't let that affect your decision making in any way. Shouldn't have happened. I want you to know that from the beginning.

Defendant moved for a new trial after his conviction arguing, in essence, that he was prejudiced by the fact that members of the jury saw him in handcuffs and belly chain.[1] The trial judge denied the motion, ruling that while it was improper for defendant to be seen by the jury in restraints, his curative instructions were adequate to correct the error and that defendant failed to demonstrate any prejudice as a result of the error.

On appeal, defendant argues that his client was prejudiced and that the curative instructions did not serve to overcome the prejudicial effect of being seen in restraints. We agree with the trial court's ruling to the contrary.

There is no dispute that defendant's restraints should have been removed before the jury had an opportunity to see him. However, because the jury's view of defendant in restraints was inadvertent and brief, he must show prejudice in order to be entitled to relief. *People v Oscar Moore*, 164 Mich App 378, 384-385; 417 NW2d 508 (1987).

A separate record was made concerning this issue prior to closing arguments. The deputy who transported defendant from the jail to the courtroom had never participated in a jury trial and was unaware of his duty to remove restraints before defendant was taken before the jury. In fact, the deputy was not even aware that the people in the courtroom were prospective jurors. Therefore, it is clear from the record that this incident arose from inadvertence, not improper intent or motive. It is also clear that the incident was relatively brief and that the trial court's

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[1] Defendant also argued that the jury could observe leg shackles which the prosecutor denied at argument and that some members of the jury panel saw him in restraints while he was being taken to the courtroom later in the trial proceedings. There is no record support for these two claims. The record indicates that defendant was wearing a leg brace restraint, but that it was concealed by his clothing. Whether any of the people who might have seen defendant come in to the courthouse later in the trial were jury members is unknown.

curative instruction was candid, explicit and easily understood. Defendant has failed to demonstrate any prejudice and any error was cured by the court's instruction.

III

Defendant next argues that his right to fully cross-examine some of the witnesses against him was error requiring reversal. We disagree.

In a criminal trial, it is the trial court's responsibility to control the proceedings, including limiting the evidence to relevant and proper matters. MCR 6.414(A). A trial court is given wide latitude when ruling on the issue of limitation of cross-examination of witnesses. *People v Sawyer,* 222 Mich App 1, 5; 564 NW2d 62 (1997).

A

As noted, defendant claimed throughout that he was not the driver of the vehicle. An alternate theory of defense was that Mr. Ranjel caused the accident when he had a heart attack and lost control of his vehicle.[2]

There was testimony that Mr. Ranjel had a number of risk factors for heart attack and an electrocardiogram on the night of the accident suggested that at some point in time he might have suffered a heart attack, although a repeat electrocardiogram twenty-four hours later suggested that he had suffered only tachycardia. Defense counsel was allowed to explore, to some extent, Mr. Ranjel's medical indications for heart attack, but ultimately he was limited in the use of the report generated by the physician who read the cardiogram; this physician was not called to testify.

We are not persuaded by defendant's argument that the limitation on his use of the report in cross-examination of the two physicians who treated Mr. Ranjel on the night of the accident prevented him from establishing possible bias of the witnesses. The report was of questionable relevance, given the facts of the accident, and defendant could have called the author of the report if he really believed that Mr. Ranjel suffered a heart attack which led to this accident. We find no error.

B

Defendant next argues that he was improperly restricted in his cross-examination of Mr. and Mrs. Ranjel[3] with regard to a civil damage suit filed by the Ranjels against defendant as a result of the accident. Again, we disagree.

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[2] As noted, the accident occurred fully in Mr. Ranjel's lane of travel while he was taking evasive action to avoid defendant's vehicle. The point of collision was eight feet eight inches into the westbound lane. It is difficult to understand defendant's theory of causation in this context.

[3] Mrs. Ranjel was a passenger in the Ranjel vehicle on the night of the accident and apparently was a plaintiff in the civil suit brought against defendant.

The trial court allowed defendant to elicit the fact that the Ranjels filed a civil damage suit against defendant. The court reserved judgment on the issue of whether any additional facts could be introduced through the Ranjels' testimony about the civil suit. However, defense counsel never returned to this topic and it is not clear from the record what further information about the civil suit defendant might have introduced to reinforce his argument that it was evidence of bias on the part of the Ranjels. Because defendant did not pursue this issue at trial and because we fail to see any prejudice to defendant, we find no error.

IV

Defendant's final argument on appeal is that he was sentenced on the basis of inaccurate information and that he is entitled to resentencing. Defendant's minimum sentence was within the guidelines' recommended range.

At sentencing defendant challenged as inaccurate two areas of the Presentence Investigation Report; he denied that he threatened to kill police officers and he denied that he did not express remorse for the current offense and continued to claim the accident was not his fault.[4] In both instances, the trial court indicated that he would not strike these two areas from the report, but would note that defendant denied them.

There is no indication that the trial court relied on these two areas in sentencing defendant within the guidelines' recommended range and the prosecution acknowledges that it is appropriate to remand this matter to strike the disputed matters from the report. Resentencing is not required. *People v Harmon*, 248 Mich App 522, 533; 640 NW2d 314 (2001).

Defendant's conviction is affirmed and this matter is remanded to the trial court for the ministerial task of striking the noted information from the Presentence Investigation Report. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Pat M. Donofrio

[4] We note that in objecting to the accuracy of the report with regard to denial of responsibility, counsel reiterated defendant's claim that he was innocent of the charges and during allocution defendant continued to deny responsibility for the accident.